

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHERYL BARAHONA and KUBA
OSTACHIEWCZ, on behalf of themselves
and others similarly situated,

Plaintiffs,

v.

T-MOBILE USA, INC.,

Defendant.

Case No. C08-1631-RSM

ORDER GRANTING MOTION TO
STAY AND COMPEL ABITRATION

This matter comes before the Court on Defendant T-Mobile USA, Inc. (“T-Mobile”)’s Motion to Stay and Compel Arbitration. Dkt #86. T-Mobile points to the arbitration clause in the June 2008 update to the Terms & Conditions (“T&Cs”) to which Ms. Barahona and Mr. Ostachiewicz (collectively “Plaintiffs”) agreed to, and which was introduced into the record by T-Mobile. *See* Dkt. #87, Ex. 2 at 2-3. This clause states, in capitalized, bold font, that “[the parties] agree that . . . any and all claims or disputes between [them] in any way related or concerning the agreement . . . including any billing disputes, will be resolved by binding arbitration, rather than in court . . . [the parties] also agree that the [a]greement affects interstate commerce so that the Federal Arbitration Act and federal arbitration law apply.” *Id.*

1 The Federal Arbitration Act (“FAA”) makes agreements to arbitrate “valid, irrevocable,
2 and enforceable, save upon such grounds as exist at law or in equity for the revocation of any
3 contract.” 9 U.S.C. § 2. The law reflects an “emphatic federal policy in favor of arbitral dispute
4 resolution.” *KPMG LLP v. Cocchi*, 565 U.S. 18, 21 (2011). The FAA applies to this action both
5 because the transactions at issue involve interstate and foreign commerce, and because the
6 parties’ agreement expressly provides for its application. The Court’s role in deciding a motion
7 to compel arbitration under the FAA is “limited to determining (1) whether a valid agreement to
8 arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at issue.”
9 *Chiron Corp. v. Ortho Diagnostic Sys.*, 207 F.3d 1126, 1130 (9th Cir. 2000).

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11 Plaintiffs do not dispute they technically agreed to T-Mobile’s updated T&Cs, which
12 included the arbitration provision. Instead, they argue that they were not provided adequate
13 notice and that the arbitration provision, including the class action waiver, Dkt. #87, Ex. 2 at 4,
14 is unconscionable and unenforceable. It is important to note that California law controls here
15 since Plaintiffs’ billing addresses are in California. *See id.* at 18 (T&Cs provide for application
16 of law of state in which customer’s billing address is located). Under California law,
17 “unconscionability has both a ‘procedural’ and a ‘substantive’ element,” the former focusing on
18 “oppression” or “surprise” due to unequal bargaining power, the latter on “overly-harsh” or “one-
19 sided” results. *A&M Produce Co. v. FMC Corp.*, 135 Cal. App. 3d 473, 486–87 (1982) (citation
20 omitted). If Plaintiffs contend the arbitration agreement is unenforceable, they bear the burden
21 of proving unconscionability. *See Green Tree Fin. Corp. v. Randolph*, 531 U.S. 79, 91 (2000).
22 The Supreme Court has clearly explained that an arbitration provision that includes a waiver of
23 class action rights is enforceable. *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 344 (2011).
24 Additionally, here, the Court has reviewed the arbitration clause and finds it to be conspicuous
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1 and clear. It encompasses the dispute between Plaintiffs and T-Mobile and Plaintiffs did not
 2 trigger the opt-out provision included in the T&Cs. Dkt. #87, Ex. 2 at 7. In fact, starting with
 3 the 2008 T&Cs, every version of the T-Mobile T&Cs has contained an opt-out provision, and
 4 despite numerous occasions to do so, Plaintiffs have never taken an action to opt out. Dkt. #86,
 5 at 14. The law assumes consumers have read the contract they accepted. *See Operating Eng's*
 6 *Pension Tr. v. Cecil Backhoe Serv., Inc.*, 795 F.2d 1501, 1505 (9th Cir. 1986) ("A party who
 7 signs a contract is bound by its terms regardless of whether [they read it or consider] the legal
 8 consequences of signing it."). Plaintiffs refer to the T&Cs update process in their Complaint,
 9 Dkt. #1, ¶¶ 22-23, 31, but at the same time allege they did not have sufficient notice of the
 10 material changes in the T&Cs until "well after filing [the] lawsuit." Dkt. #90 at 4. Thus,
 11 Plaintiffs' assertion that they were not given adequate notice of the arbitration provision,
 12 including the class action waiver that was part of the June 2008 update to the T&Cs, falls flat.
 13 Accordingly, the Court will grant T-Mobile's requested relief, stay this case, and compel
 14 Plaintiffs to arbitrate their claims against T-Mobile.
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 17 Having considered the briefing and the remainder of the record, the Court hereby finds
 18 and ORDERS that T-Mobile's Motion to Stay and Compel Arbitration, Dkt #86, is GRANTED.
 19 This case is STAYED, and Plaintiffs and T-Mobile are DIRECTED to arbitrate pursuant to the
 20 arbitration clause in effect between them. The parties are DIRECTED to file a joint status report
 21 90 days after the filing of this Order and every 90 days thereafter until the arbitration is resolved.
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 24 DATED this 25th day of July, 2024.

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27 RICARDO S. MARTINEZ
 28 UNITED STATES DISTRICT JUDGE